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**UNITED STATES DISTRICT COURT**

**DISTRICT OF UTAH**

MARC RICHFIELD, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiff,

v.

POLARITYTE, INC., DENVER LOUGH,  
DAVID SEABURG, JACOB PATTERSON,  
PAUL MANN, and RICHARD HAGUE,

Defendants.

**JOINT MOTION TO DISMISS  
WITH PREJUDICE AND ENTER  
STIPULATED ORDER**

Case No. Case No. 2:21-cv-00561-BSJ

Hon. Bruce S. Jenkins

Pursuant to DUCivR 7-1, Lead Plaintiff Christopher Evans and named plaintiff Janet Noel (“Plaintiffs”) and Defendants PolarityTE, Inc., Denver Lough, David Seaburg, Jacob Patterson, Paul Mann, and Richard Hague (“Defendants”), through counsel, respectfully move the Court to enter the proposed joint order attached hereto at Exhibit A and dismiss this matter with prejudice. The parties also respectfully submit that their agreement on a proposed order negates the need for a hearing in this matter. In support of this motion, the parties jointly state as follows:

1. On March 6, 2023, the Court held a hearing on the Defendants’ motion to dismiss. At the conclusion of the hearing, the Court stated it would grant the Defendants’ motion and directed Defendants’ counsel to submit a proposed order with specific citations to the record.
2. The parties conferred prior to the filing of their proposed orders with the Court but were unable to reach an agreement on a joint order. While the parties agreed that the proposed order should dismiss Plaintiffs’ claims with prejudice, they had a good faith disagreement on the amount of detail that should be included in the proposed order.
3. Given their prior good faith disagreement, on March 27, 2023, the parties filed separate proposed orders. *Compare* Dkt. No. 91, Ex. A, *with* Dkt. No. 92, Ex. A.
4. On April 7, 2023, the Court issued a notice scheduling this matter for a hearing on April 19, 2023, regarding the “settlement of order.”
5. On April 11, 2023, the Court rescheduled the hearing for April 20, 2023.
6. After the Court scheduled this matter for a hearing, the parties engaged in additional discussions and reached a compromise concerning the proposed order. Specifically, the parties agreed that the proposed order should only address the element of falsity. The parties further agreed that it was not necessary for the order to discuss the elements of

- scienter and loss causation. Accordingly, the parties have submitted a stipulated order that proposes the Court dismiss this matter with prejudice based solely on the plaintiffs' failure to establish the requisite falsity element.
7. All parties agree that the proposed order reflects the Court's statements at oral argument and approve the order as to form.
  8. For the foregoing reasons, the parties respectfully and jointly request that the Court (1) enter the proposed order attached hereto at Exhibit A and (2) cancel the hearing scheduled for April 20, 2023.
  9. A proposed order is attached.

Dated this 13th day of April, 2010.

FOR THE DEFENDANTS:

/s/ Jeffrey C. Corey

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*Lead Counsel for Plaintiffs*

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that a true and correct copy of the foregoing was served upon all parties of record via the U.S. District Court for the District of Utah's Electronic Filing System on April 13, 2022.

/s/ Jeffrey C. Corey